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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,067	01/18/2002	Ron Karim	P6993 US	1445
24209	7590	02/06/2006	EXAMINER	
GUNNISON MCKAY & HODGSON, LLP 1900 GARDEN ROAD SUITE 220 MONTEREY, CA 93940			PATEL, ASHOKKUMAR B	
			ART UNIT	PAPER NUMBER
			2154	

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/052,067

Applicant(s)

KARIM, RON

Examiner

Ashok B. Patel

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**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 21 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
JOHN FOLLANSBEE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

**Continuation Sheet:**

**Applicant's argument:**

"Accordingly, one reading McTernan in view of paragraph [0018] would conclude that McTernan solved the problem and would look no further. Applicant's claim language cannot be used as a basis for ignoring the teaching of McTernan that clearly and unambiguously stated that the issues of Paragraph (0018) were solved. The rejection has cited no teaching that McTernan failed to adequately address the problems outlined in Paragraph [0018]. Thus, when McTernan is considered as a whole, the is no reason that would of skill in the art would look for ways to modify McTernan."

"Fig. 3 of Price is describing how data elements in the buffer are transmitted to a buffer in a user computer for that particular user. The transmission is done while the connection is open. Price fails to provide any rationale for using the process after the connection is closed and in fact would not work in such a situation. Thus, the rejection simply extracts a piece of the reference while ignoring the context in which the piece is used. This is an improper form of analysis."

**Examiner's response:**

As previously stated, In accordance with MPEP § 2141.02 (VI), "A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and

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that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 601 (CCPA 1915). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures take as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 110 USPQ 209 (CCVA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA. 1969).

In this case, as Examiner previously stated, "Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention was made to apply the Price's server's capabilities to the McTernan's media server because although McTernan portrays to have found the solution for " a need for a system and method that improves downloading sequences and minimizes or eliminates unnecessary network communication." (para. [0019], but it is just the aspect arising from expectations that as disclosed in para. [0018],"To support a richer media experience, as discussed above, clients may need to obtain multiple items of data at once. For example, a given rich multimedia presentation may consist of many different resources which the client needs to assemble, including transient and persistent data, and data receivable only through multicasting or only through unicasting in response to specific requests. In addition, clients may be able to assemble these resources in different sequences, but only if the downloading is optimized for this purpose. The need to make repeated requests to

servers for the desired information creates heavy traffic and numerous interruptions which slow server operations and impose heavy bandwidth requirements. “

Although, as stated above, McTernan strives for “a need for a system and method that improves downloading sequences and minimizes or eliminates unnecessary network communication.”, (para. [0019], and in para. [0018],” “The need to make repeated requests to servers for the desired information creates heavy traffic and numerous interruptions which slow server operations and impose heavy bandwidth requirements.”, McTernan still teaches that at para.[0038],” Upon receipt of a duplicate packet, the client will stop receiving further packets, as the receipt of a duplicate packet is an indication that the packet sequence has looped around to the point at which the client first starting receiving packets and therefore the client should have received all the packets in the sequence. The client checks whether any packets in the sequence are missing and, if so, determines if the time to wait for the Looping Data Sender 210 to retransmit the packet is greater than a time threshold, such as the time needed to directly request and receive the missing packet or packets from the server, or a predefined threshold set by the content producer. If the time to wait for the packet to be received is greater than the threshold, the Download Manager 224 issues a request to the Client Request Handler 214. Upon receiving the request, the Client Request Handler 214 accesses the Looping Data Sender 210, duplicates the requested packet and transmits it to the client. The result is that clients are continually fed a stream of requested data and can recover missing packets by either simply awaiting retransmission of the packet or requesting it directly, whichever the client deems is most

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efficient given the bandwidth constraints of the client.”, McTernan is still “requiring repeated requests to servers for the desired information”. This suggests the deficiency of McTernan to one versed in the art.

On the other hand Price teaches, as stated previously, In another embodiment, shown in FIG. 3 and in col. 11, line 29-48, “the invention provides a method for distributing from a server via the Internet streaming media composed of a plurality of time-sequenced data elements. Time-sequenced data elements are generated or received 32. Next, a predetermined number of the data elements is sequentially loaded 34 into a server buffer, which process of 32 and 34 continues indefinitely as long as there is media data available. Next, a group of the data elements is sequentially sent 36 via the Internet from the server buffer to a user computer connected to the Internet. Upon receipt by the user computer, the sent group of data elements is loaded 38 into a user buffer associated with the user computer. The user computer immediately plays 40 the received portion of the media on the user computer. At 42, if the user buffer is not full, then additional data elements are sent to the user computer 36. And also at 42, if the user buffer is full, the system waits until new media data is delivered to the server buffer 34. This process is repeated until the entire media file is played at the user computer.” By this it is a proper form of analysis.

Thus, Price teaches “transmitting the requested data to the client data processing device **following** the closing of use connection” along with “if the user buffer is full, the system waits until new media data is delivered to the server buffer 34. “,

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thereby eliminating ""requiring repeated requests to servers for the desired information", this is what Price suggests to one versed in the art.

Thus, Price cures the deficiency of McTernan by shifting of what is expected of the client to the server. "

**Applicant's argument:**

McTernan, paragraph [0015],

Thus, the rejection would modify the multicasting technique of McTernan by modifying it to use the unicasting technique of Price that would maintain a pointer for each user and require a unique connection according to Price. This is exactly what McTernan was designed to avoid by implementing multicasting. Accordingly, the primary reference when considered as a whole, teaches away from the proposed modification."

**Examiner's response:**

McTernan teaches at paragraph [0033] in conjunction with Figs. 1-4 , "The transfer may be according to TCP or UDP protocols, and data transmitted from the server 202 may be unicast to requesting clients or available via multicast to multiple clients simultaneously through the use of a multicast router."

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